

UNITED DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

COLBY DEARMAN

Civil Action No.: 4:21-cv-2853

Plaintiff

V.

SIMON PROPERTY GROUP
(DELAWARE) DBA
KATY MILLS MALL
Defendant

Div. Juris 28 U.S.C. § 1332

COMPLAINT FOR DAMAGES

COMES NOW, COLBY DEARMAN, Plaintiff who files this Original Complaint for Damages against, SIMON PROPERTY GROUP (DELAWARE) DBA KATY MILLS MALL and Defendant and shows this Court the following:

Statement of Subject Matter Jurisdiction

Plaintiff, COLBY DEARMAN is a person of full age and a citizen of the State of Texas.

Plaintiff alleges acts of negligence against:

First Named Defendant, SIMON PROPERTY GROUP (DELAWARE) DBA KATY MILLS MALL (DELAWARE) DBA KATY MILLS MALL foreign corporation founded and incorporated in the State of Delaware, USA authorized to do and doing business in Harris County, State of Texas; and who is at all times responsible for the damages complained of herein; and thus pursuant to 28 U.S.C., 1332, there exist diversity of citizenship of the parties.

Federal Jurisdiction and Venue

SIMON PROPERTY GROUP (DELAWARE) DBA KATY MILLS MALL (DELAWARE) DBA KATY MILLS MALL made defendant herein and assumed all the liabilities, debts, and obligations of and owns and had care custody and control of the Katy Mills Mall located at municipal address at 5000 Katy Mills Circle, Katy Texas 77494 the location of the incident made basis of this lawsuit.

Additionally, the amount in controversy as to each party in this matter exceeds the jurisdictional limits of this Honorable Court of \$75,000.00.

This Honorable Court has subject matter jurisdiction over this claim which is within the territorial bounds of this Honorable Court.

Thus venue is Proper in the United States District Court for the Southern District of Texas, Houston Division.

COUNT 1

Plaintiff alleges premises liability against Defendant, SIMON PROPERTY GROUP (DELAWARE) DBA KATY MILLS MALL (DELAWARE) DBA KATY MILLS MALL is a made, Defendant is liable unto plaintiff for a reasonable sum in the premises, together with legal interest thereon from date of judicial demand until paid, and for all costs of these proceedings for the following reasons to wit.

1.

On or about November 27, 2020 at 7:30 a.m. Plaintiff, COLBY DEARMAN was a lawful invitee and patron of SIMON PROPERTY GROUP (DELAWARE) DBA KATY

MILLS MALL (DELAWARE) DBA KATY MILLS MALL property specifically, the Katy Mills Mall located at municipal address at 5000 Katy Mills Circle, Katy Texas 77494.

2.

Plaintiff, COLBY DEARMAN was walking pass the Victoria's Secret Store near the Food Court in the Katy Mills Mall when suddenly unexpectedly and without warning he slipped on water that was leaking from the ceiling causing him to fall striking the ground hard and causing serious to his person.

3.

Just prior to Plaintiff, COLBY DEARMAN's trip and fall, an employee of Defendant, SIMON PROPERTY GROUP (DELAWARE) DBA KATY MILLS MALL (DELAWARE) DBA KATY MILLS MALL, acting within the course and scope of employment after having become leaking water pipe and the floor failed to remove it and clean the water from the walkway causing an unreasonably dangerous condition to lawful invitees, patrons and customers like plaintiff.

4.

Defendant, SIMON PROPERTY GROUP (DELAWARE) DBA KATY MILLS MALL (DELAWARE) DBA KATY MILLS MALL. owed a duty of reasonable care to its patrons and invitees to the aisle way free and clear at the Katy Mills Mall located at municipal address at 5000 Katy Mills Circle, Katy Texas 77494 and was aware of plaintiff's presence as a patron and a lawful invitee.

5.

Defendant owed Plaintiff the duty of reasonable care. Defendant knew or should have known that the water leaking from the ceiling onto the floor created a dangerous condition for customers, invitees and patrons.

6.

Defendant, SIMON PROPERTY GROUP (DELAWARE) DBA KATY MILLS MALL (DELAWARE) DBA KATY MILLS MALL duty of reasonable care was breached when they failed to foresee the danger posed to customers, invitees and patrons in failing to repair the broken water pipe in the ceiling and removing the leaking water on the floor.

7.

The subject the cooking grease and flour was known by defendant's employees and thus constituting failure on the part of Defendant, SIMON PROPERTY GROUP (DELAWARE) DBA KATY MILLS MALL (DELAWARE) DBA KATY MILLS MALL to act with ordinary care under the theory of respondeat superior thereby making said defendant vicariously responsible.

8.

The aforementioned Defendant, SIMON PROPERTY GROUP (DELAWARE) DBA KATY MILLS MALL (DELAWARE) DBA KATY MILLS MALL is liable for its own negligence for things in its care, custody and control; and for the negligent acts of its employees agents and representatives;

9.

Defendant, SIMON PROPERTY GROUP (DELAWARE) DBA KATY MILLS MALL

(DELAWARE) DBA KATY MILLS MALL is liable unto Petitioner for its own negligence, the negligence of its employees, which includes but is not limited to the following:

- a. Failure to take the necessary precautions to avoid the incident made the basis of this litigation even after they knew or should have known that failing to repair the broken pipe and remove the water from the floor causing a hazardous conditions;
- b. Failure to make a timely installation of warning signs or postings informing invitees and patrons that a hazardous condition existed, which was not open and obvious to patrons, invites and guest as they entered the aisle when gazing from a normal look out distance;
- c. Failure to take the necessary precautions to avoid the incident made the basis of this litigation even after they knew or should have known;
- d. Failure to make a timely installation of warning signs or postings informing invitees that a hazardous condition existed;
- e. Failure to exercise reasonable vigilance;
- f. Failure to properly train and educate employees;
- g. Negligent hiring of incompetent employees;
- h. Failure to maintain things in their care, custody, and control;
- i. Any and all other acts of negligence which might be shown at the time of this trial.

11.

As a result of the aforementioned negligence, Plaintiff, COLBY DEARMAN slipped and fell he has seriously injured his, mouth, lower back, neck and knees requiring, along including cartilage damage, pain, and reduced mobility and may need invasive surgical

procedures and experiences ongoing and enduring pain that will last a lifetime. These injuries were proximately caused by negligence of the Defendant in not exercising ordinary care toward a foreseeably dangerous condition resulting in extensive medical treatment and damages.

12.

Plaintiff COLBY DEARMAN is entitled to an amount in damages reasonably calculated to compensate her for injuries he sustained, including but not limited to;

- a. Past, Present and future loss of household services in the past and future.
- b. Past, present and future mental pain, suffering and anguish;
- c. Past, present and future physical pain and suffering and loss of function;
- d. Past, present and future medical expenses;
- e. Loss of enjoyment of life; and
- g. Any and all other damages cognizable by the Constitution of the State of Texas and the United States Constitution.

13.

Petitioner avers amicable demand to no avail.

PRAYER FOR RELIEF

WHEREFORE, Petitioner, COLBY DEARMAN, prays that this Petition be filed and that Defendant, SIMON PROPERTY GROUP (DELAWARE) DBA KATY MILLS MALL (DELAWARE) DBA KATY MILLS MALL be duly cited and served with a copy of same, to appear and answer same and after all legal delays and due proceedings are had that there be

judgment herein in favor of Petitioner, COLBY DEARMAN, and against Defendant, SIMON PROPERTY GROUP (DELAWARE) DBA KATY MILLS MALL (DELAWARE) DBA KATY MILLS MALL in an amount reasonably calculated to compensate Petitioner for his damages, together with legal interest thereon, from date of judicial demand until paid and for all costs of the proceedings and all general and equitable relief this Honorable Court deem necessary.

Respectfully submitted,

DENNIS SPURLING PLLC
ATTORNEY AT LAW AND FRIENDS

/s/Dennis D. Spurling

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Please Serve:

SIMON PROPERTY GROUP (DELAWARE) DBA KATY MILLS MALL (DELAWARE)
DBA KATY MILLS MALL
Through Its Agent for Service of Process:
CT Corporation Systems
1999 Bryan Street Suite 900
Dallas, TX 75201-3136 USA